

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ELIZABETH POWELL,

Plaintiff,

vs.

LINDSEY ROWE,

Defendant.

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Case No. 4:05cv02111 ERW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff's Motions in Limine [doc. #36]. On October 19, 2007, this Court held a pretrial conference to hear arguments on the Motion.

The Defendant has stipulated as to paragraphs one through five, and paragraphs seven through nine. In paragraph six, Plaintiff requests "[t]hat no mention [sic] be made of prior lawsuits or workers compensation claims filed by Plaintiff as there is no relevance to any such evidence." *Mot. In Limine* ¶6. Defendant's counsel represented to the Court that he would only reference prior lawsuits or worker's compensation claims to the extent that they relate to those injuries at issue in the present action. Defendant, in her Trial Brief, contends that "medical treatment or continuing problems which Plaintiff experienced outside of [a four to eight week] time period . . . are due to problems relating to prior and/or subsequent events unrelated to the motor vehicle accident." *Def.'s Trial Brief*, 1. The disputed evidence would presumably be used to support this contention.

Federal Rule of Evidence 403 provides, in pertinent part, that "[a]lthough relevant,

evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Fed. R. Evid. 403. Federal Rule of Evidence 404(b) provides, in pertinent part:

Evidence of other ... acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Fed. R. Evid. 404(b).

Litigiousness is the sort of character trait with which Rule 404(b) is concerned. *Outley v. City of New York*, 837 F.2d 587, 592 (2nd. Cir. 1988) (Trial court erroneously permitted defendants’ argument that plaintiff was “a perpetual litigant.”). Evidence inferring or suggesting that Plaintiff is litigious poses a substantial danger of jury bias, because it would undoubtedly cause the jury to question the validity of Plaintiff’s current claims. *See Raysor v. Port Authority*, 768 F.2d 34, 40 (2nd Cir. 1985) (“[L]itigiousness may have some slight probative value, but that value is outweighed by the substantial danger of jury bias against the chronic litigant.”). Therefore, to be admissible, evidence of a plaintiff’s prior litigation “must tend to show something other than a plaintiff’s tendency to sue.” *Gastineau v. Fleet Mortgage Corp.*, 137 F.3d 490, 495-96 (7th Cir. 1998). Defendant fails to make this showing.

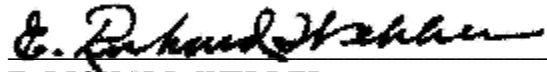
Defendant argues that she seeks to introduce evidence of Plaintiff’s prior lawsuits or worker’s compensation claims in order to prove the severity of Plaintiff’s prior injuries. While Plaintiff’s prior litigation may have some relevance, that relevance is substantially outweighed by the potential prejudice. *See* Fed. R. Evid. 403. Any concerns that Plaintiff or Defendant have about the extent of Plaintiff’s relevant prior or subsequent injuries can be adequately addressed on

cross examination, without potentially prejudicial evidence of prior lawsuits or claims.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs Motion in Limine is **GRANTED**. Defendant has stipulated to paragraphs one through five, and seven through nine. Paragraph number six is also granted. No evidence of any prior lawsuits or claims filed by Plaintiff will be introduced at trial.

Dated this 19th day of October, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE